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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/016,785

12/06/2001

Alan L. Ferguson

01-409

3421

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7590

09/13/2004

CATERPILLAR INC.
100 N.E. ADAMS STREET
PATENT DEPT.
PEORIA, IL 616296490

EXAMINER

STEELMAN, MARY J

ART UNIT

PAPER NUMBER

2122

DATE MAILED: 09/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/016,785	FERGUSON ET AL.	
	Examiner	Art Unit	
	Mary J. Steelman	2122	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/06/2001</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-27 are pending.

Information Disclosure Statement

2. IDS received 12/06/2001 has been considered.

Drawings

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: Fig. 2 is missing a description for # 320 in the Specification. See page 12, [34]. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. Applicant should delete 'Application No. 01-409' from the margin of Figs. 1 and 2.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,529,784 B1 to Cantos et al., in view of WO 97/46932 to Lee and Kyle (12/1997).

Per claims 1, 12, and 26:

-updating software installed on a machine, the machine having at least one non-volatile memory for storing the software, comprising:

-a remote data storage system for storing identifying information of said software;

(Cantos: Col. 2, lines 29-30, "...agent for collecting configuration, diagnostic, frequency of use of other information from the target computer system...")

-a remote processor for monitoring said remote data storage system to determine if updates are available for said software;

(Cantos: FIG. 1, col. 2, lines 50-52, "...components of the system for monitoring target computer systems and communicating software information to target computer system users.")

-a remote communications system operably connected to said remote processor, said remote communications system receiving said available updates from said remote processor and relaying said available updates to said machine for storage in said non-volatile memory.

(Cantos: Col. 6, lines 13-21, "The control server may also access information in the KB to determine when the new software packages are available to customers. Upon finding that a new software package is available, the control server may send a general message to all agents communicating with the control server that the software package is available. Alternatively, the

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control server may send a message that the software package is available to only those agents whose target computer system are compatible with the new software package.”)

Cantos failed to specify that the update would be to non-volatile memory. However, Lee and Kyle disclosed a remote updating system and method and specified (page 8, lines 12-13) that “hardware, firmware, or software in the client system” or (page 6, line 35) ‘ROM’ could be upgraded. Hardware and firmware are non-volatile.

Therefore, it would have been obvious, to one of ordinary skill in the art, at the time of the invention, to modify Cantos to include updates to non-volatile memory, as it is well known in the art, providing for resident code of the most desired version.

Per claims 2, 13, 17, and 27:

- an interface for notifying an owner of said machine of said available update.

(Cantos: FIG. 2B, #204, #206, col. 8, lines 44-55, “If the message is related to the target computer system, the agent determines whether the information is to be sent to the user...”)

Per claims 3, 14, and 15:

- said interface allows said owner to communicate acceptance of said available update and wherein said available update is relayed to said machine upon said owner communication acceptance.

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(Cantos: FIG 2B, #206, #210, col. 8, lines 55-58, "...initiates the presentation of relevant information to the user, either through the management tool GUI, electronic mail, a printed report or some other form...user input may be required for further action", col. 9, lines 3-5, "...after communicating the relevant information to the user, the agent would proceed to block and would perform these download and installation functions if instructed to do so by the user..."

Cantos fails to specifically state "update is relayed to said machine upon said owner communicating said acceptance." However, Lee and Kyle disclosed (page 7, lines 13-14) "process is useful for upgrading a client system in order to modify it based on payment of an appropriate agreed upon price..." and (page 7, lines 32-34), "program proceeds to the 'receive upgrade cost from server'...then goes to the 'is upgrade cost acceptable?'" Lee and Kyle more explicitly demonstrate owner acceptance. Therefore, it would have been obvious, to one of ordinary skill in the art, at the time of the invention, to modify Cantos, to include owner communicating acceptance, because Cantos also relates to updates to owner's computers, and suggests that fees and payment may be involved (col. 10, lines 23-25 and col. 10, lines 42-44) in an updated software installation..

Per claim 4:

-said interface includes an electronic message for notifying said owner.

(Cantos: FIG. 2B, col. 8, lines 55-58, "...initiates the presentation of relevant information to the user...user input may be required for further action..."

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Per claims 5 and 18:

-said electronic message includes a link to a web site allowing said owner to communicate acceptance of said available update.

(Cantos: Col. 3, line 55, "...Web server...", col. 6, lines 39-50, "A user query may be submitted to the control server...or...directly from the user through a Web browser and the Web server...A user query may also be sent to determine whether upgraded versions of software packages are available and compatible..."

Per claims 6 and 16:

-a billing system operably connected to said remote processor for billing said owner for said accepted available update.

(Cantos: Col. 2, lines 40-42, "...enrolling customers to receive computer system management services for a fee...", col. 10, lines 23-25, "The software and hardware management services described above may be provided to subscribing customers for a fee", col. 10, lines 42-44, "...payment status information, billing and subscription about the customer is stored..."

Per claim 7, 19, 20 and 21:

-a machine processor for polling said at least one non-volatile memory to collect said identifying information;

(Cantos: Col. 4, lines 5-7, "An agent associated with a target computer interrogates the target computer of system information. The agent may be implemented using a polling-only

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approach...", col. 6, lines 30-34, "An agent may be multi-threaded to perform several operations at once...listen for software configuration and alert messages from the control server and transmit information to the management tool, control server, of KB..."

-a machine data storage system for storing said identifying information, said identifying information being relayed from said machine data storage system to said remote data storage system.

(Cantos: Col. 4, lines 46-48, "The agent transmits target computer system information in a communications network over network connection...", col. 7, line 66- col. 8, line 1, "...agent transmitting a message containing target computer system information to the control server through the communications network.

Per claims 8 and 22:

-a machine communication system operably connected to said machine processor, said machine communication system receiving said available update from said remote communication system.

(Cantos, Col. 8, lines 44-46, "If the message is related to the target computer system, the agent determines whether the information is to be sent...", col. 8, lines 55-58, "...initiates the presentation of relevant information to the user, either through the management tool GUI, electronic mail, a printed report or some other form...user input may be required for further action.")

Per claims 9-11 and 23-25:

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-said remote communication system comprises wireless communication means / cellular system / satellite system.

(Cantos: Col. 3, line 19, "...mobile/wireless...", col. 3, line 49, "...satellite, cellular..."

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary Steelman, whose telephone number is (703) 305-4564. The examiner can normally be reached Monday through Thursday, from 7:00 AM to 5:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Dam can be reached on (703) 305-4552. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mary Steelman



08/30/2004



WEI Y. ZHEN
PRIMARY EXAMINER